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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1381

HONG KONG & SHANGHAI BANK, HONG KONG (TRUSTEE) LIMITED,
Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO,
Respondent.

ELEANOR PARRY and SABINA ZIGAL, also known as SABINA BITKER,
Real Parties in Interest.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

The opposition of Real Parties in Interest Eleanor Parry and Sabina Zigal to the Petition of Hong Kong & Shanghai Bank, Hong Kong (Trustee) Ltd. respectfully shows:

QUESTION PRESENTED

Petitioner's statement of the "Question Presented" in its Petition herein is predicated upon assumptions of fact which are not supported by the record herein. Contrary to the assumptions in said "Questions Presented", the facts as detailed in the Statement of Facts which follows herein show that:

(1) Petitioner is not a "Hong Kong Bank", but is a wholly owned subsidiary "trustee company" of the Hongkong & Shanghai Banking Corporation, an international bank, which maintains an office in California. The sole business activity of Petitioner is to act as a trust department for said international bank and it has no existence independent of said bank.

(2) Petitioner, through its parent and affiliate, has agents resident in California who distribute literature in California advertising Petitioner's services.

(3) Petitioner, through its parent and affiliate, maintains and services in California assets of which it is trustee which include common stock certificates, debentures, certificates of deposits and savings accounts.

Thus, the question presented is more accurately stated as follows:

Did the State of California error in asserting *in personam* jurisdiction over Petitioner, the incorporated trust department of its parent international bank, when Petitioner's services are advertised in California by its parent and an affiliate, when, through its said parent and affiliate, Petitioner maintains and services trust assets in California through the California office of its parent and affiliate, and when Petitioner has no existence independent of its parent which does business in California?

STATEMENT OF FACTS

In order to clarify and complete the "Statement" contained in the Petition herein, Real Parties respectfully call the attention of the Courts to the following facts:

In its Petition, Petitioner often refers to itself as a bank. This is not the case. Petitioner is a corporation whose sole function is to act as the trust department for its parent the Hongkong & Shanghai Banking Corporation, an international bank with an office in California. (R. 57–62; 289–290). The record shows that Petitioner is a wholly owned subsidiary "trust company" of Hongkong & Shanghai Banking Corporation, has no money in its own name and issues no separate financial statements. (R. 58) Thus, it appears that there was no real separate existence between Petitioner and its parent Hongkong & Shanghai Banking Corporation.

At page 5 of the Petition, Petitioner states that it "had three types of deposit Accounts" in California. Discovery revealed that trust assets of which Petitioner is trustee are maintained and serviced at the San Francisco office of its parent Hongkong & Shanghai Banking Corporation and an affiliate. (R. 291) These trust assets included the following: many shares of Common stocks, debentures, eight Certificates of Deposit with a face value of $1,045,583.89 and fourteen Savings Accounts totaling $63,448.77. (R. 60–61, 291) The documents evidencing title to the said securities certificates and savings accounts are also kept at the San Francisco office. (R. 61, 291) The San Francisco office of parent and affiliate collected and remitted to Petitioner the dividend and interest income on said trust assets. (R. 61) This was done for the convenience of Petitioner to avoid currency regulations. (R. 59, 297)

At page 5 of Petition herein, Petitioner states that it "solicited no trust business in California." The record clearly shows that booklets and periodicals advertising Petitioner's services were distributed in California from the San Francisco office of Petitioner's parent and affiliate. (R. 69–81, 296) These brochures invited the public to do business with the various divisions of the Hongkong Bank Group, including Petitioner, referred to as its "trustee company in Hong Kong." (R. 69–71, 296) Forum, there are such Contacts.

There are important California contacts not mentioned in Petition herein. First, Leon Zigal, who made the contract to will on which this lawsuit is based, owned and maintained a residence in San Mateo, California, where he resided from time to time until his death on January 3, 1962 in San Mateo County, California. (R. 292) At the time of his death, Leon Zigal owned securities which were held in the Trust Department of the San Francisco office of the Hongkong Bank Group as security for a loan. (R. 292) These securities were a portion of the assets in which Real Party Eleanor Parry claims a one-third interest in the California lawsuit from which Petitioner seeks to be released. (R. 72)

Second, defendant Irene Zigal, an important customer of Petitioner, has resided in California from time to time, and has talked to officers of the San Francisco office about her account. (R. 296) However, an officer of the San Francisco office refused to state whether he and Irene Zigal spoke on the subject of her account with Petitioner. (R. 296)

Third, Leon Zigal's last Will was made and executed in California and Wells Fargo Bank, a California corporation, was named as Executor of his Estate in that Will. (R. 73) Petitioner's parent Hongkong & Shanghai Banking Corporation was named in said Will as the Hong Kong Executor. (R. 73) However, Hongkong and Shanghai Banking Corporation delegated authority to Petitioner to act as Executor. (R. 73) The attorneys for the San Francisco office of the Hongkong Bank Group represented Petitioner with regard to the California assets of Leon Zigal's Estate. (R. 60, 293)

Finally, Petitioner's attorneys volunteered to aid defendant Irene Zigal by advising a witness to decline to answer questions on deposition in this action (R. 288), and thus petitioner seeks immunity from California process while its attorneys actively seek to affect the outcome of this action.

ARGUMENT

I

Petitioner has more activity in California Than Merely Maintaining Bank Accounts or Distributing Trust Income

Petitioner argues on the bottom half of page 6 and the top four lines of page 7 of its Petition that a corporation should not be to *in personam* jurisdiction merely because it maintains bank accounts within the forum. This argument has no relevance to the case at bar because the activity of petitioner in California includes distribution of literature in California by the parent corporation advertising the services of petitioner and the maintenance and servicing of various trust assets. The bank accounts were not with other institutions, but were entirely with petitioner's parent in California; petitioner also maintained in California, through its parent, stock certificates and employed its parent's facilities in California for the collection and remittance of dividend income in order to avoid currency regulations. Thus petitioner conducted substantial parts of its trust business in California.

In the case of *Hansen vs. Denkla,* 357 U. S. 325, 78 S. Ct. 1228, 2 L. Ed. 2nd 1283, cited by petitioner, there was no activity within Florida other than the distribution of income to beneficiaries, and thus it is distinguished on the facts from the case at bar.

II

Even if it is Required that There be Contacts of the Cause of Action to the Forum, there are such Contacts.

In California a corporation may be subjected to *in personam* jurisdiction because it is doing business within the state without a showing that the cause of action sued upon arose out of the activities of the defendant in the State. *KLM vs. Superior Court* (1951) 107 Cal. App. 2nd 495.

If contacts of the cause of action are required, there are such contacts in the case at bar such as: naming the petitioner's parent corporation as the executor of the Will drawn in California, the maintaining in California, by petitioner's parent corporation, assets in which real parties in interest claim an interest, the residence of defendant Irene Zigal in California, and the participation of petitioner's attorneys in the administration of the California assets of Leon Zigal held by parent in California and the assistance rendered by them to defendant Irene Zigal in the California litigation.

III

Petitioner is in Fact Present in California Through its Parent Corporation

The record shows that Petitioner has no money in its own name, makes no independent financial reports, uses facilities interchangeably with its parent Hongkong & Shanghai Banking Corporation and performs no function other than being a trust department for said parent which has offices in California.

Advertising in literature distributed by an affiliate and failure to maintain real separateness between affiliates was the basis of *in personam* jurisdiction in *State vs McPherson* (1957, Supreme Court of New Mexico) 309 Pac. 2nd 981.

A business actually run as a single entity cannot be fragmentized solely as a means of obtaining immunity from collective liability. *U.S. vs Buffalo Weaving and Belting Co.*, 155 F. Supp. 454.

A foreign subsidiary may be held to be doing business in a state through its parent. Restatement, Conflicts of Laws, (Proposed Final Draft, Sec. 52, Reporter's Note at p. 227.)

Petitioner should not avail itself of the convenience and protection of the banking facilities of its parent in California, and yet be immune from *in personam* jurisdiction in California, especially where it appears that petitioner and its parent which has an office in California are part of one worldwide business entity.

Conclusion

The petition for Writ of Certiorari should be denied.

Respectfully submitted,

David B. Caldwell
Counsel for Petitioner